

EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 325 S. Melrose	
MAILING ADDRESS: 325 S. Melrose	
CITY AND ZIP CODE: Vista, CA 92081	
BRANCH NAME: North County	
TELEPHONE NUMBER: (760) 201-8030	
PLAINTIFF(S) / PETITIONER(S): Jack Hayek	
DEFENDANT(S) / RESPONDENT(S): HCAL LLC et.al.	
HAYEK VS. HCAL LLC	
NOTICE OF CASE ASSIGNMENT	CASE NUMBER: 37-2011-00051081-CU-WT-NC

Judge: Thomas P. Nugent

Department: N-30

COMPLAINT/PETITION FILED: 02/03/2011 *3 hr*

CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants, and a Certificate of Service (SDSC form #CIV-345) filed within 60 days of filing.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

DEFAULT: If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service. (SDSC Local Rule 2.1.7)

CASE MANAGEMENT CONFERENCE: A Case Management Conference will be set within 150 days of filing the complaint.

ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION. IF THE CASE IS ORDERED TO ARBITRATION PURSUANT TO CODE CIV. PROC. 1411.11, THE COSTS OF ARBITRATION WILL BE PAID BY THE COURT PURSUANT TO CODE CIV. PROC. 1141.28.

FOR MORE INFORMATION, SEE THE ATTACHED ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730)

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

**NOTICE TO DEFENDANT: HCAL, LLC, HARRAH'S OPERATING
(AVISO AL DEMANDADO): COMPANY, INC., RINCON BAND OF
LUISENO INDIANS, and DOES 1 through 20, Inclusive**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FEB 3 2011
Clerk of the Superior Court

FEB - 3 2011

BY: T. Moore

**YOU ARE BEING SUED BY PLAINTIFF: JACK HAYEK
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

SAN DIEGO SUPERIOR COURT
325 S. Melrose
325 S. Melrose
Vista, CA 92081

CASE NUMBER:
(Número del Caso):

37-2011-00051081-CU-WT-NC

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

David P. Mayberry, Esq. (951) 296-2299 (951) 296-2297
Law Offices of David P. Mayberry
41877 Enterprise Circle North, Suite 130
Temecula, CA 92590

DATE:

(Fecha) FEB 3 2011

Clerk, by

(Secretario)

T. Moore

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

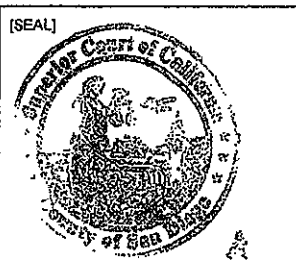
4. ☐ by personal delivery on (date):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

Page 1 of 1



CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State bar number, and address): David P. Mayberry, Esq. Law Offices of David P. Mayberry 41877 Enterprise Circle North, Suite 130 Temecula, CA 92590 TELEPHONE NO.: (951) 296-2299 FAX NO.: (951) 296-2297 ATTORNEY FOR (Name): Plaintiff, JACK HAYEK		FOR COURT USE ONLY FILED NORTH COUNTY DIVISION FEB -2 PM 4:02 (13) CLERK-SUPERIOR COURT SAN DIEGO COUNTY, CA
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 325 S. Melrose MAILING ADDRESS: 325 S. Melrose CITY AND ZIP CODE: Vista, CA 92081 BRANCH NAME: North County		
CASE NAME: Hayek v. HCAL, et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		CASE NUMBER: 37-2011-00051081-CU-WT-NC JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input checked="" type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): 5

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related cases (You may use form CM-010)

Date: January 25, 2011

David P. Mayberry, Esq.
(TYPE OR PRINT NAME)

SIGNATURE OF PARTY OR ATTORNEY FOR PARTY

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

1 David P. Mayberry, Esq. (SBN 108741)
2 LAW OFFICES OF DAVID P. MAYBERRY
3 41877 Enterprise Circle North, Suite 130
4 Temecula, California 92590
5 Tel: (951) 296-2299
6 Fax: (951) 296-2297

7 Attorney for Plaintiff,
8 Jack Hayek

FILED
NORTH COUNTY DIVISION

11 FEB -2 PM 4:02

(3)
CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF SAN DIEGO

11 JACK HAYEK,

12 Plaintiff,

13 vs.

14 HCAL, LLC, HARRAH'S OPERATING
15 COMPANY, INC., RINCON BAND OF
16 LUISENO INDIANS, and DOES 1 through
17 20, Inclusive,

18 Defendants.

CASE NO: 37-2011-00051081-CU-WT-NC

COMPLAINT FOR EMPLOYMENT
DISCRIMINATION, AGE
DISCRIMINATION, WRONGFUL
CONSTRUCTIVE DISCHARGE,
VIOLATION OF AMERICANS WITH
DISABILITY ACT; PUNITIVE DAMAGES

19 Plaintiff alleges as follows:

20 I

21 GENERAL ALLEGATIONS

22 1. Plaintiff is informed and believes and based thereon alleges that at all times material
23 hereto, Defendants, HCAL, LLC, HARRAH'S OPERATING COMPANY, INC., RINCON BAND
24 OF LUISENO INDIANS, and DOES 1 through 20, Inclusive, (hereinafter referred to as
25 "Defendants") were individuals and/or California businesses, form unknown, operating in San Diego
26 County, California. Defendants were individuals and/or entities subject to suit under the FEHA
27 Government Code Section 12900, et. seq., and were the supervisors and managers of plaintiff
28 employed by the remaining Defendants.

29 2. Plaintiff is informed and believes, and based thereon alleges, that Defendants, HCAL,
30 LLC, HARRAH'S OPERATING COMPANY, INC., RINCON BAND OF LUISENO INDIANS,
31 and DOES 1 through 20 Inclusive, were and are individuals, California corporations or business

1 forms unknown, duly existing under the laws of the State of California, with their principal place of
2 business in San Diego County, California. Defendant employers are subject to suit under the
3 California Fair Employment and Housing Act (Government Code Section 12900, et. seq.) in that the
4 employers are "employers" within the meaning of Government Code Section 12926 (d).

5 3. Plaintiff is an adult man in his seventies who at all times material hereto was and is
6 a resident of the County of Riverside, State of California, and was employed within the county of
7 San Diego by Defendants, HCAL, LLC, HARRAH'S OPERATING COMPANY, INC., RINCON
8 BAND OF LUISENO INDIANS, and DOES 1 through 20, Inclusive, and each of them and who was
9 discriminated against by all Defendant employers and DOES 1 through 20, Inclusive, upon the basis
10 of his age, medical condition/disability and upon the basis of handicap.

11 4. At all times material hereto, Plaintiff entered into an oral contract for employment
12 with Defendants to perform as a Casino Cashier for Defendants, HCAL, LLC, HARRAH'S
13 OPERATING COMPANY, INC., RINCON BAND OF LUISENO INDIANS, and DOES 1 through
14 20, Inclusive, and each of them; and Plaintiff fully and satisfactorily performed all terms, conditions
15 and obligations required of him thereunder.

16 5. Defendants, HCAL, LLC, HARRAH'S OPERATING COMPANY, INC., RINCON
17 BAND OF LUISENO INDIANS, are California business entities, form unknown, with offices for
18 businesses located within the County of San Diego, State of California.

19 6. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as
20 DOES 1 through 20, Inclusive, and therefore sues said DOE Defendants by such fictitious names.
21 Plaintiff will amend this complaint and allege their true names and capacities once known. Plaintiff
22 is informed and believes, and based thereon alleges, that each of these fictitiously named DOE
23 Defendants is responsible in some manner for the occurrences herein alleged and the Plaintiffs
24 damages as herein alleged were caused by those Defendants.

25 7. Plaintiff is informed and believes, and based thereon alleges, that at all times material
26 hereto each of the Defendants, including all Defendants under fictitious names, whether agents
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1 and/or employees of each of the remaining Defendants, and in doing the things herein alleged were
2 acting within the course and scope of the agency and/or employment. Plaintiff is further informed
3 and believes, and thereon alleges, that each of the Defendants herein gave consent to, ratified, and
4 authorized the acts alleged herein to each of the remaining Defendants.

5 8. Plaintiff worked for Defendants, HCAL, LLC, HARRAH'S OPERATING
6 COMPANY, INC., RINCON BAND OF LUISENO INDIANS, and DOES 1 through 20, Inclusive
7 as a Casino Cashier until constructively discharged in April of 2010 when he was wrongfully and
8 constructively terminated by Defendants, HCAL, LLC, HARRAH'S OPERATING COMPANY,
9 INC., RINCON BAND OF LUISENO INDIANS, and DOES 1 through 20, Inclusive, under the false
10 pretext that he was not satisfactorily performing his job and was being transferred and/or promoted
11 to another shift known as "swing shift" which included work hours throughout the evening until
12 early morning.

13 9. Throughout Plaintiff's employment tenure with Defendants and since 2002 he
14 received raises and was given good reviews on occasion. He was a valued employee and often
15 received positive accolades from his superiors. Plaintiff never received a written or spoken warning
16 with respect to any serious wrongdoing, Plaintiff performed any and all required terms and
17 conditions of his oral contract with Defendants, yet Defendants breached this oral contract of
18 employment by constructively terminating Plaintiff without just cause and in violation of California
19 Public Policy and due to Plaintiff's age and medical disability incident to his affliction with diabetes
20 mellitus. Plaintiff was forced to work 10 hour days on his feet and forced to work a labor shift in
21 the middle of the night when a simple and reasonable accommodation could have been made by
22 Defendants yet same was never offered to Plaintiff and Plaintiff's request for same was refused.

23 10. Previous to Plaintiff's constructive termination he was medically disabled by diabetes
24 mellitus. As a result of this disability and the subsequent communication to Defendants; Defendants
25 expressed disinterest in and indifference to Plaintiff's medical condition and disability and Plaintiff's
26 request for a reasonable accommodation to a shorter work shift and daytime shift was denied and
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Defendants eventually retaliated by constructively discharging Plaintiff from his employment by refusing to make reasonable accommodations despite Defendants knowledge of Plaintiff's disability, medical condition, age, and medical limitations as communicated to Defendants by reports from Plaintiff's physicians and written communications by Plaintiff to Defendants outlining his situation and requesting reasonable accommodation.

11. On September 27th, 2010, Plaintiff filed a complaint for discrimination, due to age, disability, medical condition, association and wrongful discharge with the California Department of Fair Employment and Housing (Attached hereto and incorporated herein by this reference is a true and correct copy of Plaintiff's complaint to the California Department of Fair Employment and Housing marked "Exhibits A and B"). Plaintiff received a Notice of Case Closure and a "Right to Sue Letter" from the California Department of Fair Employment and Housing on September 27th, 2010 (attached hereto incorporated herein by this reference, and marked "Exhibit C" is a true and correct copy of the "Right to Sue Letters" and "Notice of Case Closures"). Plaintiff's complaint filed with the California Department of Fair Employment and Housing charged Defendants, HCAL, LLC and HARRAH'S OPERATING COMPANY, INC., with discrimination on the basis of age, medical condition and disability. Additionally, on September 27th, 2010 Plaintiff filed a Formal Request for Trial Council Action with Defendant, RINCON BAND OF LUISENO INDIANS. No action was taken thereon. Said filing is attached hereto and marked "Exhibit D".

12. Plaintiff has exhausted his administrative remedies available to him under the California Department of Fair Employment and Housing and under Defendant Tribe and has filed a timely claim with same thus permitting him to file the within civil complaint for relief and damages

II

FIRST CAUSE OF ACTION (WRONGFUL DISCHARGE)

EMPLOYMENT DISCRIMINATION IN VIOLATION OF PUBLIC POLICY,

CALIFORNIA CONSTITUTION ARTICLE 1, SECTION 8, AND THE FEHA

JACK HAYEK vs. HCAL, LLC, HARRAH'S OPERATING COMPANY, INC., RINCON

BAND OF LUISENO INDIANS, AND DOES 1 THROUGH 20, INCLUSIVE

13. Plaintiff hereby incorporates by reference paragraphs 1 through 12 of the foregoing complaint as though same were fully set forth at length hereat.

14. During the course of Plaintiff's employment, employers and Defendants, HCAL, LLC, HARRAH'S OPERATING COMPANY, INC., RINCON BAND OF LUISENO INDIANS, by and through it's agents, servants and workers, and others, who were serving in capacity of management to Plaintiff, and other DOES 1 through 20, Inclusive, did discriminate against the Plaintiff on the basis of a condition of disability, medical condition, and age; and did further discriminate against Plaintiff because he sought reasonable accommodation from Defendants to permit him to continue working for Defendants in full capacity while accommodating the restrictions and handicap imposed upon him by his medical condition of Diabetes Mellitus.

15. During the course of Plaintiff's employment, and at all times material hereto, as aforesaid Defendants by and through the aforesaid agents and others, and each of them, harassed Plaintiff as aforesaid and discriminated against him on the basis of the aforementioned conditions of age, medical condition and disability which arose to the level of a defined handicap or disability as defined by the Americans with Disabilities Act and by government code section 12940 and various other Federal and California State statutes.

16. All of the foregoing and additional facts not set forth herein forced Plaintiff to become anxious, nervous, and depressed and resulted in Plaintiff's constructive wrongful termination. The particulars of said discrimination and harassment are set forth in "Exhibit A and

1 "Exhibit D" hereto. Plaintiff was also wrongfully denied the opportunity to continue the work that
2 he valued in life and which gave him a feeling of high esteem and satisfaction.

3 17. The above described discriminatory conduct of Defendants and the failure of
4 employers to take immediate and effective action to stop the harassment, to investigate and learn the
5 truth, and apologize to Plaintiff and reinstate Plaintiff to his existent position of employment,
6 violated California public policy as well as Government Code Section 12940 (h) making illegal the
7 discrimination and harassment of an employee upon these bases, and Article 1, Section 8 of the
8 California Constitution prohibiting discrimination in employment. Defendants' intentional wrongful
9 and discriminatory conduct forced Plaintiff to be wrongfully and constructively discharged.
10 Furthermore, a younger and less experienced employee was given Plaintiff's job and Defendants
11 insisted that Plaintiff work a shift that he and his physicians repeatedly advised was too injurious to
12 Plaintiff's health and ultimately impossible for Plaintiff to do without risking serious physical
13 decline. Furthermore, Plaintiff repeatedly requested "reasonable accommodation" in the form of
14 continued placement on a day shift but this request for reasonable accommodation was refused by
15 Defendants; when Defendants could have easily accommodated Plaintiff without undue burden to
16 Defendants' business.

17 18. Defendants conduct was malicious, oppressive, and despicable, and subjected the
18 Plaintiff to cruel and unjust hardship in his employment; and was carried on in a willful, open and
19 conscious disregard of the civil rights of the Plaintiff and was intended to force Plaintiff from his job.
20 The Plaintiff is informed and believes, and thereupon alleges, that Defendant knew this conduct was
21 repulsive and offensive to the Plaintiff and knew that it caused mental suffering, physical
22 deterioration, and anxiety for the Plaintiff, knew that the Plaintiff relied on his income from the
23 employment for livelihood, and knew that this conduct was unlawful and in violation of California
24 public policy and that same would force Plaintiff to retire. Despite such knowledge, the Defendants
25 by and through their agents engaged in the above described conduct for the purpose of intimidating,
26 embarrassing, harassing, and injuring the Plaintiff and sought to make an example of Plaintiff.

1 Furthermore, employers failed to take immediate and appropriate action to stop the harassment. The
 2 conduct of the Defendant warrants the imposition of punitive damages against the Defendants, and
 3 each of them, commensurate with their wealth.

4 19. As a direct and proximate result of the acts perpetrated by Defendants, and each of
 5 them, against Plaintiff, as herein alleged, Plaintiff has been harmed in that Plaintiff has suffered a
 6 loss of wages, vacation pay, overtime pay, and benefits, as well as future wages and benefits, in an
 7 amount and to an extent which has not yet been ascertained. Once such damages have been
 8 ascertained, Plaintiff will amend his complaint accordingly or according to proof at the time of trial.

9 20. As a further direct and proximate result of the acts perpetrated by Defendants, and
 10 each of them, Plaintiff has suffered humiliation, mental anguish, public ridicule, emotional and
 11 physical distress, in an amount and to an extent which has not yet been ascertained but will be shown
 12 according to proof at time of trial.

13 21. As a further direct and proximate result of Defendants' discriminatory actions and
 14 other actions as aforesaid, Plaintiff is entitled to recover his attorney fees and costs pursuant to
 15 Government Code Section 12965 (b).

16 III

17 SECOND CAUSE OF ACTION

18 AMERICANS WITH DISABILITIES ACT VIOLATION

19 JACK HAYEK vs. HCAL, LLC, HARRAH'S OPERATING COMPANY, INC., RINCON
 20 BAND OF LUISENO INDIANS, AND DOES 1 THROUGH 20, INCLUSIVE

21 22. Plaintiff hereby incorporates by reference paragraphs 1 through 21 of the preceding
 22 complaint as though same were fully set forth at length hereat.

23 23. Following Plaintiff's discovery of and communication to Defendants of his need for
 24 special accommodation due to the restrictions of his condition of Diabetes Mellitus, and at all times
 25 material hereto, Plaintiff suffered from this condition which was a physical disability under the
 26 Americans with Disabilities Act and California State Law which so substantially limited his level
 27

1 of function if not given reasonable accommodation as to affect his major life activities and did arise
2 to the level of a disability as defined by government code section 12940. Plaintiff's revelation of his
3 condition to Defendants was met with disinterest on the part of Defendants who subsequently refused
4 to make simple reasonable accommodation by allowing Plaintiff to remain on the day shift as a
5 cashier; and, in fact transferred Plaintiff to night-time swing shift and placed a younger less qualified
6 employee into Plaintiff's position thereby discriminating against Plaintiff on the basis of his age,
7 medical condition and disability; all in violation of the Americans With Disabilities Act, California
8 State Law, and California Public Policy. Defendants refusal to make the requested and reasonable
9 accommodation to Plaintiff resulted effectively in his wrongful constructive discharge as previously
10 indicated and as defined under the Americans with Disabilities Act and the California Fair
11 Employment and Housing Act.

12 24. The aforesaid intentional acts perpetrated by Defendant, HCAL, LLC, HARRAH'S
13 OPERATING COMPANY, INC., RINCON BAND OF LUISENO INDIANS, and DOES 1 through
14 20, Inclusive, by and through their agents, did constitute a willful and concerted effort to wrongfully
15 and constructively discharge Plaintiff because of his medical condition, medical disability, and age
16 as aforesaid and as such constitutes an intolerable interference with Plaintiffs rights under the
17 California Constitution, the various aforesaid referenced laws and statutes of the State of California
18 including the Fair Employment and Housing Act and The Americans With Disabilities Act.

19 25. The aforesaid wrongful discharge from employment constituted harassment and
20 discrimination under the fair employment and housing statutes of the State of California and The
21 Americans With Disabilities Act and did directly and proximately cause Plaintiff to suffer economic
22 loss, loss of health coverage benefits, loss of self esteem, detriment to his health and physical and
23 emotional well being as well as all other damages complained of herein.

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1 WHEREFORE, Plaintiff, JACK HAYEK, prays for judgment against the Defendants, and
2 each of them, as follows:

- 3 1. For attorney fees as provided by statute.
- 4 2. For punitive damages commensurate with the wealth of the Defendants.
- 5 3. For all loss of earnings and benefits past and future.
- 6 4. For general and special damages in an amount according to proof.
- 7 5. For costs incurred in the within litigation.
- 8 6. For interest on sums due.
- 9 7. For such other and further relief as the court deems just and proper.

10 DATED: January 25, 2011

LAW OFFICES OF DAVID P. MAYBERRY

11
12 By:


David P. Mayberry, Esq.
Attorney for Plaintiff, Jack Hayek

*** EMPLOYMENT ***

COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACTDFEH # **E201011D5200-00**

DFEH USE ONLY

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

YOUR NAME (Indicate Mr. or Ms.)

HAYEK, JACK

TELEPHONE NUMBER (INCLUDE AREA CODE)

(951)587-6724

ADDRESS

41973 NIBLICK ROAD

CITY/STATE/ZIP

TEMECULA, CA 92591

COUNTY

RIVERSIDE

COUNTY CODE

065NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, OR STATE OR LOCAL GOVERNMENT AGENCY WHO
DISCRIMINATED AGAINST ME:

NAME

HCAL, LLC AND HARRAHS ENTERTAINMENT, INC.

TELEPHONE NUMBER (Include Area Code)

(800)522-4700

ADDRESS

777 HARRAHS RINCON WAY

DFEH USE ONLY

CITY/STATE/ZIP

VALLEY CENTER, CA 92082

COUNTY

SAN DIEGO

COUNTY CODE

073

NO. OF EMPLOYEES/MEMBERS (if known)

150+DATE MOST RECENT OR CONTINUING DISCRIMINATION
TOOK PLACE (month, day, and year)**04/22/2010**

RESPONDENT CODE

00

THE PARTICULARS ARE:

I allege that on about or before
04/22/2010, the following
conduct occurred:☒ termination☐ laid off☐ demotion☒ harassment☐ genetic characteristics testing☒ constructive discharge (forced to quit)☐ impermissible non-job-related inquiry☐ denial of employment☐ denial of promotion☐ denial of transfer☒ denial of accommodation☐ failure to prevent discrimination or retaliation☐ retaliation☒ other (specify) **Denial of Employment**☐ denial of family or medical leave☐ denial of pregnancy leave☐ denial of equal pay☐ denial of right to wear pants☐ denial of pregnancy accommodationby **HCAL, LLC AND HARRAHS ENTERTAINMENT, INC.**

Name of Person

Job Title (supervisor/manager/personnel director/etc.)

because of:

☐ sex☒ age☐ religion☐ race/color☐ national origin/ancestry☐ marital status☐ sexual orientation☐ association☒ disability (physical or mental)☒ medical condition (cancer or

generic characteristic

☐ other (specify)☐ retaliation for engaging in protected

activity or requesting a protected

leave or accommodation

State of what you
believe to be the
reason(s) for
discriminationMY AGE (74) AND MY DISABILITY/MEDICAL CONDITION - DIABETES, HYPERTENSION, PERIPHERAL VASCULAR DISEASE, VIOLATION OF CALIFORNIA FAIR
EMPLOYMENT AND HOUSING ACTI wish to pursue this matter in court. I hereby request that the Department of Fair Employment and Housing provide a right-to-sue. I understand that if I want a federal notice of right-to-sue, I must visit
the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of the DFEH "Notice of Case Closure," or within 300 days of the alleged discriminatory act,
whichever is earlier.I have not been coerced into making this request, nor do I make it based on fear of retaliation if I do not do so. I understand it is the Department of Fair Employment and Housing's policy to not process
or reopen a complaint once the complaint has been closed on the basis of "Complainant Elected Court Action."By submitting this complaint I am declaring under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge except as to
matters stated on my information and belief, and as to those matters I believe it to be true.Dated **09/27/2010**At **Temecula**DATE FILED: **09/27/2010**

DFEH-300-03a (02/08)

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

STATE OF CALIFORNIA

*** EMPLOYMENT ***

COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACTDFEH # **E201011D5202-00**

DFEH USE ONLY

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

YOUR NAME (Indicate Mr. or Ms.)

HAYEK, JACK

TELEPHONE NUMBER (INCLUDE AREA CODE)

(951)587-6724

ADDRESS

41973 NIBLICK ROAD

CITY/STATE/ZIP

TEMECULA, CA 92591

COUNTY

RIVERSIDE

COUNTY CODE

065NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, OR STATE OR LOCAL GOVERNMENT AGENCY WHO
DISCRIMINATED AGAINST ME:

NAME

HARRAH'S OPERATING COMPANY, INC.

TELEPHONE NUMBER (Include Area Code)

(760)751-3100

ADDRESS

777 HARRAH'S RINCON WAY

DFEH USE ONLY

CITY/STATE/ZIP

VALLEY CENTER, CA 92082

COUNTY

SAN DIEGO

COUNTY CODE

073

NO. OF EMPLOYEES/MEMBERS (if known)

150+DATE MOST RECENT OR CONTINUING DISCRIMINATION
TOOK PLACE (month, day, and year)**04/22/2010**

RESPONDENT CODE

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THE PARTICULARS ARE:

I allege that on about or before
04/22/2010, the following
conduct occurred:☐ termination☒ denial of employment☐ denial of family or medical leave☐ laid off☐ denial of promotion☐ denial of pregnancy leave☐ demotion☐ denial of transfer☐ denial of equal pay☒ harassment☒ denial of accommodation☐ denial of right to wear pants☐ genetic characteristics testing☐ failure to prevent discrimination or retaliation☐ denial of pregnancy accommodation☒ constructive discharge (forced to quit)☐ retaliation☐ impermissible non-job-related inquiry☒ other (specify) Terminationby **HARRAH'S OPERATING COMPANY, INC.**

Name of Person

Job Title (supervisor/manager/personnel director/etc.)

because of:

☐ sex☐ national origin/ancestry☒ disability (physical or mental)☐ retaliation for engaging in protected☒ age☐ marital status☒ medical condition (cancer or

activity or requesting a protected

☐ religion☐ sexual orientation

generic characteristic

leave or accommodation

☐ race/color☐ association☒ other (specify)Diabetes, Hypertension, Peripheral VascularDiseaseState of what you
believe to be the
reason(s) for
discriminationMY AGE (74) AND MY DISABILITY/MEDICAL CONDITION - DIABETES, HYPERTENSION, PERIPHERAL VASCULAR DISEASE, VIOLATION OF CALIFORNIA FAIR
EMPLOYMENT AND HOUSING ACTI wish to pursue this matter in court. I hereby request that the Department of Fair Employment and Housing provide a right-to-sue. I understand that if I want a federal notice of right-to-sue, I must visit
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or reopen a complaint once the complaint has been closed on the basis of "Complainant Elected Court Action."By submitting this complaint I am declaring under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge except as to
matters stated on my information and belief, and as to those matters I believe it to be true.Dated **09/27/2010**At **Temecula**DATE FILED: **09/27/2010**DFEH-300-030 (02/08)
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

STATE OF CALIFORNIA



STATE OF CALIFORNIA - STATE ATTORNEY CONSUMER SERVICES AGENCY

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

1350 FRONT STREET, SUITE 1063, SAN DIEGO, CA 92101
(619) 645-2681
www.dfeh.ca.gov

ARNOLD SCHWARZENEGGER, Governor

Phyllis W. Cheng, Director

September 27, 2010

HAYEK, JACK
41973 NIBLICK ROAD
TEMECULA, CA 92591

RE: E201011D5200-00
HAYEK/HCAL, LLC AND HARRAHS ENTERTAINMENT, INC.

Dear HAYEK, JACK:

NOTICE OF CASE CLOSURE

This letter informs that the above-referenced complaint that was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective September 27, 2010 because an immediate right-to-sue notice was requested. DFEH will take no further action on the complaint.

This letter is also the Right-To-Sue Notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

If a federal notice of Right-To-Sue is wanted, the U.S. Equal Employment Opportunity Commission (EEOC) must be visited to file a complaint within 30 days of receipt of this DFEH *Notice of Case Closure* or within 300 days of the alleged discriminatory act, whichever is earlier.

Notice of Case Closure

Page Two

DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,

A handwritten signature in black ink, appearing to read "Ignacio R. Vazquez". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ignacio R. Vazquez
District Administrator

cc: Case File

CATHY PINZONE
CAHSIERING DEPT. MANAGER
HCAL, LLC AND HARRAHS ENTERTAINMENT, INC.
777 HARRAHS RINCON WAY
VALLEY CENTER, CA 92082



STATE OF CALIFORNIA - STATE

CONSUMER SERVICES AGENCY

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

1350 FRONT STREET, SUITE 1063, SAN DIEGO, CA 92101

(619) 645-2681

www.dfeh.ca.gov

ARNOLD SCHWARZENEGGER, Governor

Phyllis W. Cheng, Director

September 27, 2010

HAYEK, JACK
41973 NIBLICK ROAD
TEMECULA, CA 92591

RE: E201011D5202-00

HAYEK/HARRAH'S OPERATING COMPANY, INC.

Dear HAYEK, JACK:

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Notice of Case Closure
Page Two

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Sincerely,

A handwritten signature in black ink, appearing to read "Ignacio R. Vazquez". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ignacio R. Vazquez
District Administrator

cc: Case File

CATHY PINZONE
CASHIERING DEPARTMENT MANAGER
HARRAH'S OPERATING COMPANY, INC.
777 HARRAHS RINCON WAY
VALLEY CENTER, CA 92082

REQUEST FOR TRIBAL COUNCIL ACTION



Tribal Council Meetings are held every week unless cancelled. **THIS REQUEST FORM MUST BE SUBMITTED TO THE TRIBAL OFFICE ONE (1) WEEK PRIOR TO THE NEXT TRIBAL COUNCIL MEETING, NO LATER THAN 4:30 P.M.**

Name: Hayek, Jack

(Last, First Middle)

Date: 9/27/2010

(MM/DD/YYYY)

1. Subject matter to be discussed: (Please Check all appropriate boxes)

- ☐ Ordinance ☐ Loan ☐ Membership ☐ Per Cap ☐ Services
☒ Tribal Govt. ☐ Committee ☒ Personal ☒ Other: discrimination claim

2. Please give a short summary as to why you want to be placed on the agenda:

On or about 04/22/10, I was constructively discharged from my job as Cashier III at the Hannah's Rincon Casino and Resort due to discrimination on the basis of my age (74) and medical/physical disability (Diabetes Mellitus, Hypertension and Peripheral Vascular Disease) in violation of the California Department of Fair Employment and Housing Laws. This discrimination is also in violation of the policies and rules of the Rincon Band of Luiseno Indian Tribe and is also in violation of the Indian Gaming Regulation Act and the Tribal-State Gaming Compact between this Tribe and the State of California.

3. Describe what action(s) have been taken to resolve or confront the underlining issues

No action has been taken by the Tribe.

4. Please list specific questions and/or action(s) desired from the Tribal Council

That the Tribal Council consider this Claim Form, investigate the acts of discrimination and award the claimant, Jack Hauk, a remedy in the form of a restoration of his job with proper accommodations or Award damages for the loss of his job.

5. Requestors Contact Information

Mailing Address: 41973 Niblick Road

City: Temecula State: CA Zip Code: 92591

Contact Number (1): (951) 587-6724 Contact Number (2): (905) 440-1015

I understand filing of this form does not automatically place my request on the agenda. Further, I understand that a Rincon official will contact me and advise me of the status of my request.

Signature: _____

Jack Hauk

Date: 09/27/10

FOR OFFICE USE ONLY:

Received Date: _____ Time: _____

PROOF OF SERVICE

1013A (3) CCP Revised 5/1/88

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action. My business address is 41877 Enterprise Circle North, Suite 130, Temecula, California 92590.

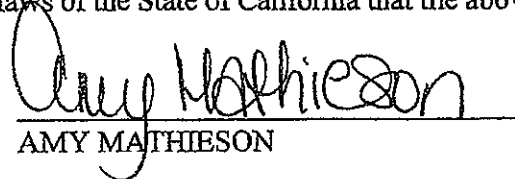
On **September 27, 2010**, I served the foregoing documents described as **REQUEST FOR TRIBAL COUNCIL ACTION** interested parties in this action by placing a true and correct copy thereof by Certified Mail at the address(s) shown below, by facsimile, and by email:

RINCON LUISENO BAND OF INDIANS TRIBAL OFFICE
Attn: Dick Watenpaugh
P.O. Box 68 Valley Center Road
Valley Center, CA 92082
Facsimile: (760) 749-1051
dwatenpaugh@rincontriibe.org

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepared at Temecula, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on **September 27, 2010**, at Temecula, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


AMY MATHIESON

Certified Mail 7009 2820 0001 6696 7629

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only. No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$1.05
Certified Fee	2.80
Return Receipt Fee (Endorsement Required)	2.30
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$6.15

Postmark Here

7009 2820 0001 6696 7629

Sept 10
 Rincon Wiseno Band of Indians
 Street, Apt. No.,
 or PO Box No. P.O. Box 68 Valley Center Rd.
 City, State, ZIP+4 Valley Center, CA 92082
 PS Form 3811, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>P. Kitchen</i></p> <p>C. Date of Delivery <i>9-29-10</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p>
<p>1. Article Addressed to:</p> <p>Rincon Wiseno Band of Indians Attn: Dick Watenpaugh P.O. Box 68 Valley Center Rd Valley Center, CA 92082</p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p>	<p>7009 2820 0001 6696 7629</p>

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540